P&P File # P155967

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY (Newark)

DANIEL BOCK, JR. Plaintiff vs. **PRESSLER & PRESSLER, LLP,** Defendant	**2:11-cv-07593-KM-SCM**

DEFENDANT'S REPLY BRIEF REGARDING SUBJECT MATTER JURISDICTION

Dated: October 17, 2016

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In accordance with the Court's September 2, 2016 Order (ECF #82) Defendant Pressler & Pressler, LLP replies to the Brief filed on behalf of Daniel Bock asserting this Court's Article III jurisdiction over this case (ECF #86) and further submits as follows:

1. Bock has neither alleged nor proven an injury-in-fact.

In his Brief, Bock claims that Pressler's alleged filing of the state court complaint without "meaningful attorney review," in and of itself constitutes a concrete injury because Pressler's alleged wrongful conduct invaded his legislatively-created private right to be free from false, deceptive and misleading misrepresentations. Brief, pp. 1, 4-5 (ECF #86). He claims, therefore, that he "need not allege any additional harm to satisfy Article III's concreteness requirement." Brief, p. 5 (ECF #86). Bock's position is incorrect. As explained in Pressler's Brief (ECF #85), "meaningful attorney involvement" is not a right elevated by Congress to a concrete injury. Indeed, there is no mention of "meaningful attorney involvement" in § 1692e or elsewhere in the FDCPA. Instead, as this Court previously recognized in its summary judgment opinion (ECF #59), "meaningful attorney involvement" is a judicially-created doctrine that spawned from cases involving mass-generated collection letters sent by collection attorneys. As such, claims involving "meaningful attorney involvement" have historically been raised with no claim of actual damages and (pre-*Spokeo*) no consideration given to Article III standing. This is because an absence of "meaningful attorney involvement," as pled by Bock in this case, causes no concrete injury.

Indeed, nowhere in his Complaint does Bock allege that he suffered any actual damages. Complaint, p. 7 (ECF #1). Instead, Bock only "requests" statutory damages of up to $1,000.00 plus attorneys' fees and costs.[1] Complaint, p. 7 (ECF #1). Apparently realizing the insufficiency of these allegations, Bock has filed a self-serving, conclusory Declaration in which he now claims, for the first time since the inception of this litigation, that Pressler's conduct in filing the lawsuit created a real risk of harm because it not only invaded his privacy, but also caused him stress and anxiety, and cost both money to defend the collection lawsuit and time away from work.[2] Declaration, at ¶¶ 4-6, 10-11, 15 (ECF #86-1); Plaintiff's Brief, at p. 6-8 (ECF #86). He also contends, for the first time, that he settled the lawsuit because had he not done so, he might have had an adverse judgment entered against him, which might have caused him to file bankruptcy, which might have had negative consequences on his credit standing, and which in turn might have negatively affected him, his family and his fiancé for years. Declaration, at ¶ 15 (ECF #86-1).

Bock does not allege that a "meaningful attorney review" would have generated a different outcome. Whether Ralph Gulko took four seconds, four minutes, or four hours to review the two-sentence state court complaint Bock's newly-discovered injury pertains to the fact that he was sued on a debt that he owed, not to the amount of review undertaken by Gulko. Bock's attempt to now create a concrete injury through his Declaration testimony – where no such injury was pled in his Complaint[3]– should be rejected.

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[1] Bock later stipulated that his recovery in the event of victory would consist solely of the $1,000.00 statutory damages (ECF #63).

[2] A substantial portion of Bock's Declaration testimony consists of inadmissible hearsay statements to which Pressler objects. Bock Declaration (ECF #86-1). Specifically, Pressler objects to ¶¶ 8, 9, 10, 13, 14, 15, and 17 on hearsay grounds.

Bock's Complaint makes no mention of invasion of privacy, nor of mental anguish, emotional distress, lost wages, lost income, loss of credit, or loss of affection. His Complaint neither describes nor seeks recovery of attorneys' fees or expenses incurred in defending ultimately settling the state court collection suit. Neither his Complaint nor his Declaration claim that Pressler's conduct in filing the state court suit without "meaningful attorney review" affected his ability to dispute the debt, affected the litigation and settlement strategy that he chose to pursue, or led to lost opportunities to resolve the collection action. His speculative and similarly unpled claims of a possible bankruptcy filing, impairment to his credit, and negative impact on him and his family are too conjectural to constitute a concrete injury. Indeed, Bock's Declaration makes clear that no such risks ever materialized. Respectfully, Bock has neither alleged nor proven that he suffered a "concrete and particularized" injury. Bock's claim consists of nothing more than "a bare procedural violation, divorced from any concrete harm," and, as such, the Court lacks Article III jurisdiction. *Spokeo, Inc. v. Robins*, 578 U.S. ___, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016).

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[3] Bock has not sought leave to amend his Complaint to allege these purported injuries.

2. The additional post-*Spokeo* District Court cases relied upon by Bock are inapposite and do not lend support to the finding of a concrete injury in this case.

In his Brief, Bock cites several post-*Spokeo* District Court opinions addressing concreteness in the context of FDCPA claims. Brief, pp. 8-10 (ECF #86). Those cases, however, are easily distinguishable as none of the cases involve a claim that an attorney violated § 1692e by filing a collection suit without first conducting a "meaningful attorney review." Instead, they involved situations in which the claimed FDCPA violations were more than a mere procedural technicality. [4]

In *Jackson v. Abendroth & Russell, P.C.*, No. 4: 16-cv-00113-RGE-HCA, 2016 U.S. Dist. LEXIS 125986 (S.D. Iowa September 12, 2016), the Court found that a bare procedural violation of § 1692g, did not, by itself, constitute a concrete harm that satisfies the injury-in-fact requirement. *Jackson*, 2016 U.S. Dist. LEXIS 125986 at *19-26 (citing 11 other appellate and district court opinions finding allegations of statutory violations were insufficient to establish concrete injury). Here, as in *Jackson*, Bock's claim of an absence of "meaningful attorney involvement" in the filing of the state court complaint in

[4] For example, *Daubert v. NRA Group., LLC*, No. 3:15-CV-00718, 2016 U.S. Dist. LEXIS 105909 (M.D. Pa. Aug. 11, 2016) involved a claim that the Defendant violated the FDCPA because a collection letter contained a bar code that was visible through the glass window of the envelope. *Linehan v. Allianceone Receivables Mgmt., Inc.*, No. C15-1012-JCC, 2016 U.S. Dist. LEXIS 124276 (W.D. Wash. Sept. 13, 2016), involved a claim that the defendants had filed collection suits in an improper venue. *Nyberg vs. Portfolio Recovery Associates, LLC*, No. 3:15-CV-01175-PK, 2016 U.S. Dist. LEXIS 71897 (D. Or. June 2, 2016) involved a claim that a debt buyer filed a collection suit that was barred by limitations and was eventually dismissed for want of prosecution. *Sayles v. Advanced Recovery Sys., Inc.*, No. 3:14-CV-911-CWR-FKB, 2016 U.S. Dist. LEXIS 114718 (S.D. Miss. August 26, 2016) involved a claim that the Defendant failed to report that a debt was disputed to the credit bureau.

the context of this case constitutes, at most, a technical violation that caused no concrete injury.

CONCLUSION

WHEREFORE, Defendant requests that the Court vacate its order of June 30, 2014, find that Plaintiff lacks Article III standing, and dismiss this case for want of subject matter jurisdiction. Defendant further requests all such other and further relief as to which it may be justly entitled.

Dated: October 17, 2016

Respectfully submitted,

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